

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Return Date: November 4, 2004
Time: 10:00 a.m.

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In re

Chapter 13

MATTHEW FELDMAN

Case No.: 804-85319-288

Debtor(s)
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NOTICE OF MOTION

SIRS / MADAMS:

PLEASE TAKE NOTICE, that MICHAEL J. MACCO, Chapter 13 Trustee of the above captioned estate, will move before the Honorable Stan Bernstein, United States Bankruptcy Judge on the 4TH day of NOVEMBER, 2004, at 10:00AM, at the United States Bankruptcy Court located at 290 Federal Plaza – Courtroom 860, Central Islip, New York 11722, for an Order, pursuant to 11 U.S.C. §§109(g) & 1307(c) dismissing this case with prejudice, prohibiting the debtor(s) from filing another petition under any chapter for a period of 180 days, by reason of the debtor(s)' repeat bad faith filings, failure to submit monthly pre-confirmation payments, failure to provide documents, failure to appear at §341 meeting of creditors, and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, shall be filed with the Court and served upon the undersigned no later than five (5) days prior to the return date of this motion.

Dated: Melville, New York
October 4, 2004

Yours, etc.

MICHAEL J. MACCO
Chapter 13 Trustee
135 Pinelawn Road – Suite 120 South
Melville, New York 11747
(631) 549-7900

TO: *Office of the United States Trustee*
Long Island Federal Courthouse
560 Federal Plaza
Central Islip, NY 11722

EMC Mortgage Corporation
c/o Steven J. Baum, P.C.
220 Northpointe Parkway – Suite G
Amherst, NY 14228

Matthew Feldman
62 Haven Lane
Levittown, NY 11756

Barton P. Levine, Esq.
Attorney for Debtor(s)
875 Avenue of the Americas – Suite 205
New York, NY 10001

County of Nassau
c/o F. Steven Tate, Esq.
One West Street
Mineola, NY 11501

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re

MATTHEW FELDMAN

tmm 1634

Chapter 13

Case No.: 804-85319-288

Debtor(s)

-----X

APPLICATION

TO THE HONORABLE STAN BERNSTEIN, UNITED STATES BANKRUPTCY JUDGE:

MICHAEL J. MACCO, Chapter 13 Trustee in the above captioned estate, respectfully represents as follows:

1. The debtor(s) filed a petition under the provisions of 11 U.S.C. Chapter 13 on August 19, 2004, and thereafter MICHAEL J. MACCO was duly appointed and has qualified as Trustee.

2. Upon information and belief, this is the third petition for relief under Chapter 13 filed by the debtor(s), within approximately two (2) years.

3. The first petition was filed by the debtor(s) under case number 801-86287-sb, on August 15, 2001. The case was subsequently dismissed upon application of the Trustee, post-confirmation, on August 27, 2003.

4. The debtor(s) then filed a second petition, under case number 803-87826-sb, on December 1, 2003. The petition was incomplete, having been filed without a Chapter 13 Plan, and Schedules I and J. The case was subsequently dismissed upon application of the Trustee, prior to confirmation, on July 7, 2004.

5. As of the date of this motion, the debtor(s) ha(s/ve) failed to submit any monthly pre-confirmation payments to your Trustee.

6. In addition, as of this date the debtor(s) ha(s/ve) failed to file a complete set of schedules, within the fifteen (15) day period required under the Bankruptcy Code.

7. Moreover, the debtor(s) failed to appear at the §341 meetings of creditors, held on September 13, 2004 at 9:00 a.m., as well as September 30, 2004 at 10:30 a.m.

8. This is another frivolous filing for the sole purpose of obtaining the rights and benefits of the Automatic Stay, as provided in 11 U.S.C. §362.

9. This is a material default prejudicial to the rights of the creditors of the debtor(s).

WHEREFORE, your Trustee prays for an Order, pursuant to the provisions of 11 U.S.C. §§109(g) & 1307 (c) dismissing this case with prejudice, prohibiting the debtor(s) from filing another petition under any chapter for a period of 180 days, and for such other and further relief as this Court deems just and proper.

Dated: Melville, New York
October 4, 2004

/s/ Michael J. Macco
Michael J. Macco, Chapter 13 Trustee
135 Pinelawn Road – Suite 120 South
Melville, New York 11747
(631) 549-7900

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss:

MICHAEL VUOLO, being duly sworn deposes and says: deponent is not a party to the action, is over 18 years of age and resides in Queens County, New York.

On October 4, 2004, deponent served the within:

NOTICE OF MOTION AND APPLICATION

upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of same, enclosed in a post-paid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

*Office of the United States Trustee
Long Island Federal Courthouse
560 Federal Plaza
Central Islip, NY 11722*

*County of Nassau
c/o F. Steven Tate, Esq.
One West Street
Mineola, NY 11501*

*Matthew Feldman
62 Haven Lane
Levittown, NY 11756*

*Barton P. Levine, Esq.
Attorney for Debtor(s)
875 Avenue of the Americas – Suite 205
New York, NY 10001*

*EMC Mortgage Corporation
c/o Steven J. Baum, P.C.
220 Northpointe Parkway – Suite G
Amherst, NY 14228*

/s/ Michael Vuolo
MICHAEL VUOLO

Sworn to before me this
4TH day of OCTOBER, 2004

/s/ Janine M. Zarrilli
NOTARY PUBLIC

Janine M. Zarrilli
Notary Public, State of New York
No. 01ZA5084708
Qualified in Nassau County
Commission Expires September 8, 2005